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A REPORT

FROM

ERNST & YOUNG

MANAGEMENT

CONSULTANTS

City of Hamilton

Comprehensive Audit Licence Division

Final Report

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May 21, 1991

PRIVATE AND CONFIDENTIAL

Mr. Dave Wilson
Chair, Study Steering Committee of the
Licence Division of the City Clerk's Department
Corporation of the City of Hamilton
City Hall
Hamilton, Ontario

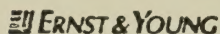
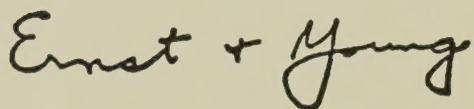
Dear Alderman Wilson:

In connection with our comprehensive audit of the Licence Division of the City Clerk's Department we are pleased to attach the final report for the Steering Committee under the following headings:

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It has been a pleasure to work with you and the Steering Committee on this challenging study. We would like to thank all those who participated in the comprehensive audit, for their cooperation. If you have any questions on the report please do not hesitate to contact us.

Yours sincerely,

 ERNST & YOUNG

B. P. Townsend
B. E. Paquette
R. A. Legault

1.0 EXECUTIVE OVERVIEW

1.1 BACKGROUND

The Licence Division of the City Clerk's Department administers and enforces five categories of licences:

- lottery licences (5 types);
- establishment licences (33 types);
- mobile licences (21 types);
- trade licences (10 types);
- smoking (in public places and the workplace).

To fulfill its responsibilities, the Licence Division interfaces with the City of Hamilton Licensing Committee, the Regional Municipality of Hamilton-Wentworth Trades Licence Committee, the City's Law, Building, Fire, and Traffic Departments and the Region's Police and Health Departments.

The Licence Division consists of a Licence Division Manager (Licence Administrator as per by-laws), an Administrative Supervisor, 5 Administrative Clerks, a Smoking Control Officer, a Chief Licence Inspector, 6 Licence Inspectors and a Secretary.

The key processes involving Licence Division and its interfacing departments and committees include:

- by-law creation, amendment, review and revocation;
- new application and issuance inspection;
- renewal issuance and followup;
- complaint inspection; and
- compliance inspection.

The total cost of licensing activities is not presently known. The 1990 departmental costs for the Licence Division alone were \$628,000. This does not include the costs of licensing activities incurred by the City's Law, Building, Fire and Traffic Departments. Nor does it include the indirect costs, such as premises costs. The licence fees earned in 1990 were \$1.1 million.

1.2 SCOPE OF COMPREHENSIVE AUDIT

The scope of the comprehensive audit of Licence Division included:

- a review of the scope, complexity, and requirements of the Licence by-laws and their consistency with other legislation;
- a review of the role of the Licensing Committee, Regional Trades Licence Committee and their relationship with the Law Department and Licence Division and their applicable by-laws;
- an assessment of the expectations, role, structure and staffing of the Licence Division;
- an assessment of the process opportunities to reduce workload and improve timing;
- a review of the reporting of Licence Division; and
- comments on whether or not systems exist to determine the total costs of various licensing activities.

The comprehensive audit excluded:

- an assessment of the governing legislation and the processes of interfacing departments;
- a review of external controls, safeguarding of assets or of cash, and EDP audit; and
- an assessment of individual performance within the License Division.

The comprehensive audit also specifically excluded the performance of management responsibilities and as such focused on identifying recommendations for action.

1.3 COMPREHENSIVE AUDIT APPROACH

The comprehensive audit approach consisted of a review of relevant background material including the by-laws, organizational procedures, reports, etc.; interviews with key individuals; observations of a Licensing Committee meeting; and focus groups with interfacing departments, License Division supervisory staff, administrative staff and inspection staff. The information was analyzed, a draft report prepared for discussion with the Steering Committee and a final report issued.

The legal opinions expressed in this report are provided by Kingsmill, Ross & McBride, Barristers and Solicitors of Hamilton, Ontario.

1.4 SUMMARY OF FINDINGS AND RECOMMENDATIONS

The City of Hamilton's licensing environment is very complicated. The licence by-laws have a high degree of complexity and inconsistency making it difficult to effectively administer and enforce these by-laws. The organizational structure and processes that support the creation, amendment, administration and enforcement of these by-laws have also become very complicated, experiencing conflicting roles and unable to effect change or improvement.

While it is commendable that all the parties involved in licensing have been able to keep the process working to date, considerable dissatisfaction was expressed at the lack of improvement in the whole area of licensing and its continuing use as a panacea for the community's immediate problems. Several people suggested that the City may be close to the economic threshold where it may not be economically possible to enforce all the by-laws as it has a duty to do so. Others suggested that the by-laws have fallen out of sync with the community's needs.

The thirty-five recommendations in this report focus on the key licensing issues facing the City — the licensing by-laws, organizational structure and processes. The recommendations also recognize and attempt to overcome the following underlying obstacles to the successful implementation of these recommendations:

- (1) The overwhelming perception among those interviewed that change in general within the City on the issue of licensing will not happen and the lack of a track record of positive change on other issues, makes it necessary to identify a person with the authority and will to effect change to and to champion the implementation. The recommendations identify the CAO as the initial champion of the implementation of these recommendations.
- (2) Another obstacle is lack of an independent perspective on what the City's licensing philosophy should be. The recommendations suggest the use of external resources to develop a sound licensing philosophy.
- (3) Yet another obstacle is the coping managerial and supervisory style required to operate the current licensing activities. This style will be no longer appropriate as major changes are made. As such the recommendations suggest that new managerial skills be developed.

The major benefits for the City in implementing these recommendations are:

- better service to the public through a well designed licence portfolio;
- an ability to plan rather than merely coping day to day;
- a reduction in manual effort;
- shorter turnaround time;
- greater accountability;
- personal development among the management and supervisory team;
- clear, meaningful by-laws;
- better communication and profile;
- a licensing direction for the City;
- elimination of overlap; and
- clear roles and responsibilities.

It is important that the reader of this report understand that a comprehensive audit by its nature identifies opportunities for improvement and concentrates very little on those areas operating satisfactorily. The absence of these areas in this report is not intended to imply that they do not exist, but rather were not examined.

A summary of the findings and recommendations of the comprehensive audit is presented in the following pages of this Executive Overview.

FINDING #1 — REACTIVE LICENSING

The utilization of licensing over the past few years has increased as it has become a quick way to react to problems in the community. Reactive licensing of problem areas has resulted in an increasing number of licences and greater complexity in licensing administration and inspection requirements. Reactive licensing has contributed to the present day complexity of the licensing by-laws.

RECOMMENDATIONS

- #1.1: We recommend that a coherent licensing strategy be developed for the City as a guideline for creation, enforcement, administration and amendment. It should present a controlled and effective approach to licensing within the municipality and be supported by City Council as well as the various interfacing departments. The licensing strategy should contain, but not be limited to the following:
- (a) the purpose of licensing in the City of Hamilton and a definition of the licensing and inspection philosophies and its interface with other legislation;
 - (b) in light of the purpose and philosophy, the appropriate roles are clearly defined for the various parties involved in licensing including Council, Licensing Committee, Finance and Administration Committee, Law Department, Licence Division and interfacing departments;
 - (c) a set of criteria to be applied when considering the future and present establishment or amendment of licences by-laws, and the elimination of current by-laws (examples of criteria - self-governing alternatives, effect on enforcement, administration, long term implications, sensitivity, significance, cost vs. benefit, interfacing department opinion, interfacing legislation and so forth);
 - (d) the plan for correction of existing licence complexities (avoiding large task forces);
 - (e) the process for continual re-evaluation of current licence by-laws;
 - (f) the plan for regionalization of selected licences; and
 - (g) the plan for computerization.
- #1.2: We recommend that the licensing strategy (Recommendation #1.1) be developed by a person external to the City's operations. It is essential that an independent, fair and strategic perspective be taken in the development of the strategy. The design process should include consultation with Council and all parties involved in licensing and subsequent 'buy in'. The individual should have the following characteristics - a familiarity with the subjects of licensing, regionalization, computerization, strategy design and implementation experience, consultative and consensus building skills. To emphasize the importance and cross departmental nature of the strategy the individual should report to the CAO until the strategy is completed.

- #1.3: We recommend that the Law Department regularly conduct a periodic review of the City's Licensing By-laws in consultation with Licence Division to ensure compliance with new legislation and administrative concerns.

FINDING #2 — ROLE OF THE LICENSING COMMITTEE AND ITS INTERFACE WITH THE CITY'S LICENCE DIVISION AND LAW DEPARTMENT

The role and responsibility of the Licensing Committee and Licence Division Manager as defined in the City of Hamilton Act, Chapter 119, is different than the role and responsibilities currently assumed by the Licensing Committee and the Licence Division. Similarly the role and responsibility of the Licensing Committee and the City's Law Department places the Law Department in a position where it is in a conflict of interest.

RECOMMENDATIONS

- #2.1: We recommend that the implementation of the City of Hamilton Act (1) s.o. 1978, Chapter 119, be reviewed to clarify conflicts concerning the City's Licensing Committee and the possible provisions of delegated authority to the Licence Division Manager.
- #2.2: We recommend that the implementation of the City of Hamilton Act (1) s.o. 1978 Chapter 119, be revised to remove any conflict between the decision-making function of the Licensing Committee and its appeal function or that, in the alternative, the City petition the Province to amend existing legislation to clarify the role of the Committee.
- #2.3: We recommend that the practices and procedures of the Licensing Committee and the Licence Division Manager be reviewed and revised to emphasize the administrative role of the Licence Division Manager and the decision-making role of the Licence Committee or that, in the alternative, that the City petition the Province to pass legislation delegating to the Licence Division Manager decision making power.
- #2.4: We recommend that Hearing procedures before the Licensing Committee and the use of legal counsel be set out in a clear statement adopted by the Committee for the purpose of future Hearings before it and that the procedures adopted do not unnecessarily deviate from those set out in the Statutory Powers Procedures Act.
- #2.5: We recommend that the Law Department of the City not provide legal advice to the Licence Division on matters where there is a dispute between the Licence Division Manager and the licence applicant for issue or renewal which is likely to result in a hearing before the Licensing Committee.
- #2.6: We recommend that the Law Department provide legal advice to the Licence Committee only on hearing any matter before it and that independent legal advice be provided for the Licence Division Manager on Hearings before the Committee.

FINDING #3 — EXPECTATIONS, ROLE, STRUCTURE AND TOOLS OF LICENCE DIVISION

Expectations of Licence Division vary significantly. Performance targets and an accountability mechanism are not established. As such, the Licence Division's role and resulting structure are multi-focused in an attempt to accommodate all expectations.

RECOMMENDATIONS

#3.1: We recommend that the City recast the Licence Division into a new Licence Division with the following characteristics:

1. Licence Division would perform those activities which could be regionalized, activities requiring coordination with other departments and by-law research/planning activities. These activities are initially best suited for a group separate from the City's other departments.
2. Regional trade licences would be assumed by the Building Department (they handle most of the work already). Staffing implications should be determined by Building Department and Licence Division.
3. Marriage licence, sales of by-laws and city publications, city tenders, municipal elections, full counter services, courier and shuttle services would be assumed by the City Clerk's Department. Staffing implications should be determined by City Clerk's Department and Licence Division.
4. Licence Division would initially report directly to the CAO to emphasize the importance and urgency of implementing change in the City's licensing activities. After the transition is complete, the Division could remain a separate unit or report to one of the various City departments depending on the nature and scope of the licence activities.
5. Licence Division would help develop the licensing strategy and plan;
6. Licence Division would be relocated to a more private area with appropriate security to provide greater confidentiality for the public.

#3.2: We recommend that the managerial skills of Licence Division's management and supervisory team be redefined and developed to support the new structure and responsibilities identified in Recommendations #3.1. Under the direction of the Director of Human Resources a skills inventory should be undertaken and based on the results, a training program for each person be implemented.

#3.3: We recommend that the position of Smoking Control Officer be transferred to the Health Department as it is not enforcing a licence.

#3.4: We recommend that the Licence Division create a position called Research and Planning Assistant. A senior position, the incumbent would assume much of the research role now performed by the Licence Division Manager, Administrative Supervisor and Secretary and examine the impact of by-laws. This position should be filled immediately to allow the Manager of Licence Division to assume new responsibilities.

- #3.5: We recommend that the Administrative Supervisor's position be refocused to coordination of applications, but include a focus on public education, formation of turnaround standards, etc.
- #3.6: We recommend that the Administrative Clerks enhance their cross training and each one assume responsibilities for all the procedures pertaining to one file. Rotation of clerks to other departments should be considered as a further way to challenge and reward long tenure staff.
- #3.7: We recommend that "one stop shopping" at the Licence Division be encouraged only to the extent it does not interfere with the provision of regular services and does not place the City at risk.
- #3.8: We recommend that the Chief Licence Inspector position be relocated to the Taxi Inspection Office.
- #3.9: We recommend that the equipment needs of the Inspectors be assessed and budgeted for in the new year.
- #3.10: We recommend that 'garage type' inspection options be evaluated and the most effective method be implemented.
- #3.11: We recommend that the secretarial support hired for inspection, but housed at City Hall be relocated to the Taxi Inspection Office. All inspectors should then be allowed to be out of the office and not required to staff the office.
- #3.12: We recommend that the Licence Division Manager conduct joint briefing sessions with administrative and inspection staff to communicate Licensing Committee decisions and promote communication within the Division.
- #3.13: We recommend that the Licence Division set performance targets and report on their achievement.
- #3.14: We recommend that fees be established for work done by license inspection for other municipalities.

FINDING #4 — PROCESS IMPROVEMENT

Contact between the Licence Division and interfacing departments has been primarily to process licence applications, renewals and compliance resolution. Very little attention has been focused on process improvement.

RECOMMENDATIONS

- #4.1: We recommend that Licence Division and interfacing departments: (1) receive a briefing on the concept of continuous improvement; (2) get together on a "one to one" or "small team" basis to make immediate streamlining improvements and to continue to work together in a continuous improvement mode; and (3) monitor and reward improvements. Senior management should reinforce and support the changes made.
- #4.2: We recommend that Licence Division and interfacing departments rotate staff/exchange staff to help each group better understand other groups needs.
- #4.3: We recommend that turnaround standards be established and agreed upon by the Licence Division and interfacing departments and the service standards be communicated to the public.
- #4.4: We recommend that the Law Department and Building Department start a series of quarterly briefings on the by-laws and other legislation for License Division and interfacing departments. The Law Department should given case law examples, explain that lawyers are insured and qualified to give legal advice while others are not, encourage questions and discuss ways to revise the by-laws.
- #4.5: We recommend that bi-monthly Chief Inspectors meetings be started. Each group's Chief inspector and inspector (chosen on rotation) attend. Current issues and process interface items should be included on the agenda.

FINDING #5 — COMPUTERIZATION OPPORTUNITIES

While major computerized system introductions in Licence Division are unlikely, several opportunities for minor system improvements exist which have not as yet been fully implemented by the Division.

RECOMMENDATIONS

- #5.1: We recommend that Licence Division develop a systems plan which anticipates systems hardware, software and training requirements associated with existing and proposed systems. This plan should be appropriately approved, budgeted and implemented.
- #5.2: We recommend that Licence Division identify two staff within the Division (one administrative, one inspection), who have demonstrated ability with computer tools. These staff should be responsible for Division staff training in computer tools.

- #5.3: We recommend that the Licence Division implement the minor systems opportunities identified, to simplify procedures for Licence Division staff and to reduce workload and interruptions.

FINDING #6 — REPORTING

The effectiveness of the City's licensing portfolio and the effectiveness of the structures and processes in place to support that portfolio are not reported for review by all parties involved in licensing decisions and activities.

RECOMMENDATIONS

- #6.1: We recommend that all issue related requests for reports be questioned as to their need and the impact on workload. Licence Division has to be given permission to say "no" to many requests and focus on effectiveness reporting.
- #6.2: We recommend that Licence Division with the support of interfacing departments start a series of quarterly effectiveness reports on the licensing portfolio, structure and processes.
- #6.3: We recommend that all listing reports be re-evaluated as to their purpose, content and frequency. Through process improvement real reporting needs will be identified.

FINDING #7 — COST OF LICENSING

The total cost of the City's licensing activities is not presently known. Costing of licensing activities would be useful for setting licence fees and external inspection rates as well as for budgeting purposes among the City departments involved in licensing.

RECOMMENDATIONS

- #7.1: We recommend that the City conduct an Activity Based Costing exercise on licensing. After the completion of an initial costing, a decision should be taken as to the completion of an ABC annually thereafter.

2.0 BACKGROUND

2.1 BY-LAWS GOVERNING LICENSING ACTIVITIES

There are five by-laws which govern the licensing activities of the Licence Division of the City Clerk's Department of the Corporation of the City of Hamilton. These are:

1. By-law 78-130, The Lottery Licence By-Law, 1978 enacted by The City of Hamilton outlines the duty and responsibility to administer and enforce the provisions of this by-law through the Licence Division of the City Clerk's Department. There have been six amendments to this by-law since 1978.
2. By-law 79-323, The Licensing Code By-law, enacted by the City of Hamilton (consolidating previous by-laws on the licensing of certain premises, motor vehicles, activities and businesses by the Corporation of the City of Hamilton) outlines the duty and responsibility to administer and enforce the provisions of this by-law through the Licensing Committee and the Licence Division of the City Clerk's Department. There have been four fee changes, five new types of licences added and other amendments to the by-law since 1979.
3. By-law 80-258 enacted by The City of Hamilton is a regulatory by-law titled "Smoking in Public Places". This by-law is enforced by the Licence Division.
4. By-law 89-370 enacted by The City of Hamilton is a regulatory by-law titled "Smoking in the Workplace". This by-law is enforced by the Licence Division.
5. By-law R88-136 enacted by the Regional Municipality of Hamilton-Wentworth to examine, licence, regulate and govern tradespersons carrying on or engaged in certain trades in the Regional Municipality. This by-law superseded the City of Hamilton by-laws regulating the aforesaid tradespersons and is administered by the Licence Division of the City Clerk's Department and the Building Department. There has been one fee change to the by-law since 1988.

2.2 LICENCE ENFORCEMENT & ADMINISTRATIVE PROCESSES

Various licence enforcement and administrative processes are currently in operation to support the following four categories of licences and one regulatory function:

- lottery licences
- establishment licences
- mobile licences
- trade licences
- smoking (in public places and the workplace)

Each category's processes are described in the following sections.

2.2.1 Lottery Licences

Lottery Licences are issued throughout the year and are not renewable. It is a licence category that has experienced significant growth in both volume and complexity and this growth is expected to continue.

As at October 31, 1990, there were 5 different types of lottery licences — Bingo, Nevada Tickets, Raffles, Bazaar and other Provincial Licences. License Division issued 3,311 lottery licences for the 10 month period ending October 31, 1990.

Prior to issuing a lottery licence all applicants are screened by the Licence Division, a police check is performed, Licence Committee approves and where applicable Provincial approval is obtained. Police approval is currently obtained within 10 - 14 days, an increase from 3-4 days when the volume of applications was significantly lower. Provincial approval is currently obtained within 2 months. Licence Committee approval is monthly.

Licensing Division performs a review of all bingo, raffle and bazaar reports including financial reports and bank statements as a quasi-audit function on the results of the events. Compliance with regional requirements are not presently audited.

2.2.2 Establishment Licences

Establishment licences are issued throughout the year and are renewed on a calendar basis. As at October 31, 1990, there were 33 different types of establishment licences — amusement machines, roller skating rink, bakeshop, barbershop, billiards, bingo parlour, body-rub parlour owner, bowling alley, butcher, drive yourself establishment, dry cleaners - plant, dry cleaners - receiving station, food shop, fresh fish, garage, hairdresser, laundry, lodging house, 2nd level lodging house, massagist, pawnbroker, pet shop, public hall, lunch counter, restaurant, salvage yard, second hand, steam bath, theater, transient trader, Class H By-law 79-144, flea market owner, and flea market stall holder.

Prior to issuing a new establishment licence Building, Fire, Health, Police and sometimes Traffic Department approvals are required. Fire and Health check the premises prior to giving approval. Building Department does not check the premises. Applicants generally expect a licence within 1-2 weeks. The fastest a licence can be issued is 3-4 weeks. Some licences can take 3-4 months due to delays in an applicant's response and delays in inspections. No approvals are required for the renewal of establishment licences.

For the 10 month period ended October 31, 1990 Licence Division issued the following establishment licences:

New Licences	544
Renewal of Licences	2894
Transfer of Licences	<u>221</u>
Total Licences Issued	<u>3659</u>

Only 7 of the 33 types of establishment licences accounted for 80% of the 3,656 licences issued. These were garage, food shop, restaurant, Class H By-law 79-144, hairdresser, second hand and flea market.

The licence inspections performed by the Licence Division on establishments for the same 10 month period were:

Complaints by Public	551	(primarily concerning garages and restaurants)
Non Renewal Follow-up	1549	(3/4 of the licensed restaurants and food shops did not automatically renew; 2/3 of licensed garages did not automatically renew)
Routine Inspections	<u>598</u>	(covered 4/5 of the garages; 1/4 of the lodging houses; 3/4 of the amusement/billiard establishments)
Total	<u>2698</u>	

2.2.3 Mobile Licences

Mobile licences are issued throughout the year and are renewed on a calendar basis. As at October 31, 1990, there were 21 different types of mobile licences — auctioneer, bill distributor, bill poster, body rubber, body-rub parlour operator, cab broker, cab driver, private cab owner, public cab owner, cartage vehicle, driving instructor, driving school, livery vehicle driver, livery vehicles, milk vehicles, pedlar-foot, pedlar, refreshment vehicles, salvage dealer, building exterior cleaner, old gold dealers.

Prior to issuing a mobile licence police checks are performed on all applicants. Fire approval is required on body rubber and old gold dealer applications. Building approval is required on body rubber, building exterior cleaner, old gold dealer applications. Health approval is required on body rubber, refreshment vehicle, old gold dealer applications. Mobile licences are issued for transients, e.g., exotic dancers are issued quickly, 3-4 days. Other mobile licences vary in the length of time required to issue depending on the various procedures involved.

The number of licences issued by Licence Division for a ten month period ended October 31, 1990, were:

New Licences	577
Renewal of Licences	2227
Transfer of Licences	<u>16</u>
Total Licences Issued	<u>2920</u>

Only 4 types of the 21 types of mobile licences accounted for 80% of the 2920 licences issued. These were cab driver, private cab owner, cartage vehicle, and livery vehicles.

The licence inspections performed by the Licence Division on mobile licences for the same ten month period were:

Complaints by Public	552	(primarily concerning taxi and cartage)
Non Renewal Follow-up	1036	(primarily licensed taxis, second hand/flea market, and cartage did not automatically renew)

Routine Inspection	<u>12085</u>	(4050 taxi inspections; 4870 exotic dancer inspections; 1850 second hand and transient traders inspections)
Total Inspections	<u><u>13673</u></u>	

2.2.4 Trade Licences (Regional)

Trade licences are issued throughout the year and are renewed on a calendar basis. For the ten months ended October 31, 1990, there were 10 different types of trade licences — building repairs contractor, building repairs master, drain repair contractor, drain installer master, electrical contractor, electrical master, heating/air conditioning/vent contractor, master heating/air conditioning/vent installer, plumbing contractor, plumbing master.

Prior to issuing a trade licence, police checks are performed on all new applicants and Building Department administers the examinations. The number of licences issued during this 10 month period were:

New Licences	411
Renewal of Licences	<u>2139</u>
Total Licences Issued	<u><u>2550</u></u>

Inspections of trade licences are performed by Building Department Inspectors if there is a specific complaint.

2.2.5 Smoking

Unlike the other by-laws, the Smoking by-laws do not in any way involve a licence. Licence Division responds to complaints and performs routine inspections (304 inspections for 10 months ended October 31, 1990).

2.3 LICENCE ENFORCEMENT & ADMINISTRATIVE STRUCTURE

Several licence enforcement and administrative elements are in place to support the City's licensing requirements. A diagram of the structure is shown opposite this page. The following elements are discussed in greater detail in the next sections.

- City of Hamilton Licensing Committee
- Regional Municipality of Hamilton - Wentworth Trades Licensing Committee
- Licence Division

2.3.1 City of Hamilton Licensing Committee

The City of Hamilton Act, 1978, Chapter 119 with the consent of the Legislative Assembly of the Province of Ontario empowered the Council of the Corporation of The City of Hamilton to establish a Licensing Committee to receive licence applications and fees, to issue, renew and approve the transfer of licences and to refuse to issue or renew or approve transfer of licences. Subject to the Statutory Powers Procedure Act, 1980 CH.484, the Licensing Committee has the power to hear an applicant or licensee who is entitled to a hearing and to recommend to Council whether or not a licence should be issued, renewed, transferred, suspended or revoked.

By-law 78-224, in accordance with The City of Hamilton Act, 1978, Chapter 119, provided for the establishment of The City of Hamilton Licensing Committee composed of at least three members of the Council of The City of Hamilton for a term of office concurrent with the term of office of the Council that appointed them.

Subject to the Statutory Powers Procedure Act the Committee has the powers under the existing legislation in the place and stead of Council to issue and renew licences and approve the transfer of City licences. The Licensing Committee also has the power to hear an applicant or licensee who is entitled to a hearing and to recommend to Council whether or not a licence, in respect of which a hearing has been held, should be issued, renewed, transferred, suspended or revoked and to attach specified conditions to the suspension.

Presently appointed to the Committee are:

- Chair (a member of Council and the Finance and Administration Committee)
- Three members of Council
- Two non-members - with particular skills in law, and the dealings of City Council

The Licensing Committee held 30 meetings in 1989 and has held 27 meetings to December 1990. The Committee has refused to issue, renew or approve transfer of approximately 24 licences in 1990.

2.3.2 Regional Municipality of Hamilton-Wentworth Trades Licensing Committee

By-law R88-136 pursuant to the Regional Municipality of Hamilton-Wentworth Act provided for the establishment of a Trades Licensing Committee of the Regional Municipality. The Trades Licence Committee is responsible for hearing persons on all questions of the issue, refusal to issue, revocation, suspension or renewal of licences and to recommend to Regional Council.

The Licence Division Manager, as prescribed in the by-law, is the Administrator of Licences for the trades and is responsible for the collecting of the fees and accounting for all fees and fines. The Manager also signs all licences issued or renewed pursuant to the By-law on behalf of the Regional Municipality. The Administrator of Licences may refuse to issue or renew a licence where any provisions of the By-law have been contravened or may recommend to the Trades Licence Committee the suspension or revocation of a licence. The Committee then hears appeals on the issue to refuse to issue a licence.

In each of 1989 and 1990 there were two hearings for the revocation and suspension of trade licences.

2.3.3 Licence Division

The Licence Division of the City Clerk's Department has a mandate to administer and enforce the by-laws relating to licensing as a result of municipal by-law-723. The Division

consists of a Licence Division Manager, an Administrative Supervisor, 5 Administrative Clerks, a Smoking Control Officer, a Chief Licence Inspector, 6 Licence Inspectors (Special Constables) and a Secretary. With the exception of the Licence Inspectors, who operate out of the Taxi Inspection office, all other people in the Division operate out of City Hall, Clerk's Department.

Some of the regular activities of the Division include:

- processing new, renewal and transfer licence applications
- issuing permits - fireworks, street vendors
- taxi inspections (40% of inspection time)
- adult entertainment, bingo, transient trades, second hand/flea market, cartage/refreshment vehicle inspections (25% of inspection time)
- follow-up on non renewals (10% of inspection time)
- follow-up on non compliance, issuing summons (10% of inspection time)
- visual, drive by inspections of establishments along with follow up of complaints (8% of inspection time)
- attendance at court (7% of inspection time)
- preparing and coordinating Licensing Committee agenda and reports
- responding to City Council, Finance and Administration Committee and Subcommittees, and Licensing Committee requests
- preparing reports and making recommendations to the Taxi Advisory Committee, Bingo Advisory Committee
- interpreting by-laws
- running errands for City Clerk's Department
- answering questions of the public
- performing counter services for the City Clerk's Department
- selling by-law and city publications
- assisting at municipal election time

Licence Division utilizes the assistance and support of the City's Law, Building, Fire and Traffic Departments, as well as Regional Police and Health Departments in carrying out its licence approval and inspection responsibilities. The Licence Division also routinely liaises with the City Licensing Committee, Regional Trade Licensing Committee, the Finance and Administration Committee, the Taxi Advisory Committee and the Bingo Advisory Committee.

2.4 COST OF LICENSING ACTIVITIES

The total cost of licensing activities including the costs of creation, amendment, review, revocation, enforcement and administration is not currently tracked. The Licence Division's 1990 costs alone were \$628,000, approximately half administrative and half enforcement. This does not

include the costs of licensing activities incurred by the City's Law, Building, Fire and Traffic Departments and Regional Departments. Nor does it include the indirect costs such as premises costs, nor the time value of Council and its committees involved in licensing. The Licence fees earned in 1990 were \$1.1 million. Since the total cost of licensing activities is unknown it is impossible to conclude whether or not the City's licences are cost recovered.

3.0 SCOPE OF COMPREHENSIVE AUDIT

3.1 INCLUSIONS

The scope of the comprehensive audit of the Licence Division included findings, conclusions, and where appropriate, recommendations on:

- Requirements, composition and execution of the licence by-laws
 - Review of the scope of by-laws.
 - Review of by-laws to ascertain whether or not the content and complexity are required as well as the ease or difficulty of administration and enforcement.
 - Review of consistency among licensing by-laws and consistencies between by-laws and provincial legislation.
 - Review of appropriateness of qualification and inspection requirements and use of fines and penalties as a deterrent feature.
 - Review of administration and enforcement of by-laws by the Licence Division considering the application timing and inspection procedures actually performed.
 - Review of the role of the Licensing Committee and Regional Trades Licence Committee in licensing and the hearing process
 - Review the criteria for granting or denying a licence.
 - Review the relationship of the Law Department to the Licence Division, Licensing Committee and Regional Trades Licence Committee.
- Expectations, Structure and Staffing of the Licence Division.
 - Assessment of the expectations of the Division, from the standpoints of the Licensing Committee, Trades Licence Committee, Finance and Administration Committee and interfacing departments.
 - Assess the location of the Licence Division within the municipal structure with particular reference to the City Clerk's Department.
 - Assess the roles and responsibilities of managerial and other key positions.
 - Assess staffing levels necessary to meet the expectation of the Division.
- Streamlined Processing and Approval Systems
 - Within each of the five key processes:
 - (1) By-law creation, amendment, review and revocation
 - (2) New application and issuance inspection
 - (3) Renewal issuance and follow up
 - (4) Complaint inspection
 - (5) Compliance inspection
 - Review the opportunities for further computerization and paperflow streamlining.
 - Assess the workload within the Licence Division, workload sharing with other departments, etc. and licence renewal timing.
 - Assess the proactiveness versus reactiveness of the Division.

- Review the reporting by the Division as to accuracy, timing and completeness.
- Review the overlap of inspection with other departments within the City and Region.

3.2 EXCLUSIONS

While the focus of the comprehensive audit was on the Licence Division, it was evident from our preliminary scoping that other municipal departments and regional agencies play a major role in licensing and inspection activities. Our review did not assess the adequacy and accuracy of the systems, controls and practices within these interfacing departments and agencies. We did, however, examine the overall effectiveness of the interfaces.

A comprehensive audit specifically excludes carrying out management responsibilities. Since the purpose of licensing is regulatory, rather than the raising of revenue and the setting of fees to cover the administrative cost of licensing, it is management's responsibility to continually re-evaluate the adequacy of all licence fees within the confines of the provincial legislation regardless of whether they can be changed or not. Accordingly, our review excluded an assessment of the appropriateness of the licence fee structure. We do, however, comment on whether or not the information and an appropriate process exist to provide a total picture of the cost and cost recoveries of the various licensing activities.

Our comprehensive audit did not assess individual performance within the Licence Division as this is a part of the management performance appraisal process.

A comprehensive audit is not by nature a compliance audit of external controls or safeguarding of assets or of cash, nor is it an EDP audit. These types of audits are typically performed by external or internal auditors. As it was not our intention to duplicate any previous or future audit efforts in these areas, these audits were not included in our scope.

3.3 APPROACH

Our approach consisted of the following steps:

1. a review of relevant background material including the by-laws, organizational procedures, systems documentation, organization charts, job descriptions, reports and information provided to various governing committees;
2. interviews with key individuals from the Law Department, the Information Systems Department, the City Clerk's Department the Licence Division, and Licensing Committee;
3. attending a meeting of the Licensing Committee;
4. four focus group interviews were conducted — the first group was comprised of representatives from departments which interface within licensing such as Law, Building, Health, Police, Traffic and Fire; the second group was comprised of the Licence Division inspectors and mechanic; the third group was comprised of the Licence Division administrative staff; the fourth group was comprised of the Licence Division Manager, the Administrative Supervisor and Chief Licence Inspector;
5. the information gathered was analyzed and findings, conclusions and recommendations were summarized in a draft report for discussion with the Steering Committee; and
6. a final report was issued.

The legal opinions expressed in this report are provided by Kingsmill, Ross & McBride, Barristers and Solicitors of Hamilton, Ontario.

4.0 DETAILED FINDINGS AND RECOMMENDATIONS

FINDING #1 — REACTIVE LICENSING

The utilization of licensing over the past few years has increased as it has become a quick way to react to problems in the community. Reactive licensing of problem areas has resulted in an increasing number of licences and greater complexity in licensing administration and inspection requirements. Reactive licence has contributed to the present day complexity of the licensing by-laws.

BASIS

Licensing is an increasingly popular method to control some problems as they arise within the City. Most licensing has been a reaction to a specific incident, the concerns of special interest groups or the transfer of responsibilities from the Province to the City.

Licence Division and the interfacing departments commented on the impact of reactive licensing:

- politicians initiate licence by-laws rather than being initiated by Licence Division and interfacing departments in accordance with a licensing strategy;
- the development of licence by-laws are more rushed;
- little thought is given to the difficulties of enforcement;
- interfacing departments may be involved, but not listened to prior to the development of a by-law;
- interfacing departments are not "bought in" to the by-law once passed;
- in some cases there is an overlap of inspections;
- there is not a high degree of comfort with the licence by-laws and the increasing use of this measure;
- the lack of inspection on renewed and transferred licences, as well as the lack of inspection by Building on new establishment licences is of concern (public confidence may require this duty to enforce if no other regular program of inspection exists);
- the workload of the Licence Division and the interfacing departments continues to increase, as does the cost to the City;
- alternative solutions to the City's concerns are often not considered if a longer timeframe for correction is an option;

- Licence Division operates in a continual crisis mode, unable to plan its activities;
- no thorough review is performed periodically to eliminate some by-laws which may no longer be required, and improve existing by-laws; and
- budget constraints do not allow the City to operate a system to determine if people are operating without a licence.

The Licence Division and interfacing departments indicated that they have expressed these concerns for some time and little has been done about it. It certainly represents a major source of frustration.

From a legal perspective, the difficulty that exists with the City of Hamilton's licensing by-laws results largely from the manner in which they have been amended over the years. A review of the by-laws leads one to believe that the by-laws have been amended in a reactive manner attempting to incorporate into them elements required to respond to new difficulties and problems, or amendments to the authorizing legislation, as they arose. Examples of this can be seen in the by-laws. The following identifies some, but not all of these examples:

- **Requirements Not Appropriate Nor Applicable**

The primary By-law 79-323 is augmented by a series of schedules which relate to specific areas that the City licenses. The by-law makes certain matters relevant to an application for various types of municipal licences. This primary body of requirements is supplemented by the requirements contained in the various schedules. However, some of the requirements of the primary by-law may not be suitable or authorized matters to consider in issuing the specialized licences. For example, Section 5(4) of By-law 79-323 requires that the Licensing Committee shall, in consideration of the application for a licence, consider the character of the applicant. Only with respect to certain specific enterprises would it be necessary or appropriate to consider a licence applicant's character. However, the format of the by-law would indicate that this is a matter to be considered on every single licensing application, renewal or transfer. The difficulty would appear to be that the comprehensive by-law has not been reviewed sufficiently since the time of its initial passage while the schedules have been extensively revised and added to from time to time.

- **Continuous Amendments Causing Confusion**

The extensive renewal of the various schedules has in itself led to certain problems. As an example of one such area of confusion, the schedules were amended in 1987 to add a schedule that would deal specifically with the licensing of flea markets. This schedule was added as Schedule 42. However, in 1984 the by-law had been previously amended to add a schedule dealing with building exterior cleaners. This schedule had previously been added as Schedule 42. Thus, the by-law continued with two Schedule 42's until this situation was rectified in 1989, through the passage of By-law 89-347.

- **Rules in By-laws Conflicting with Other Acts**

The Licensing Committee is governed in its decision-making exercises by the provisions of the Statutory Powers Procedure Act. To the extent that the rules established by the City to govern this process conflict with the provisions of that Act, the rules are without force. Further, the existence of a separate set of rules differing from the provisions of the Statutory Powers Procedure Act which the board employs in making its decisions, may jeopardize the ability to defend the correctness of the decisions of the Licensing Committee.

- **Fines Out of Date**

With the exception of body rub parlours, the fines are out of date with Section 321 of the Municipal Act which allows fines up to \$2000 now. Room exists to make the fines more of a deterrent.

- **Reasonableness of Reporting Requirements**

Section 5 of Schedule 1, indicates the various obligations that are placed on an auctioneer under the provisions of this by-law. As a general rule in light of established case law, obligations prescribed by a licensing by-law must relate to the activity being licensed and the reporting requirements are included in the by-law, they must be reasonable. Section 5 requires extensive reporting and requires the auctioneer to police his operation. The obligations imposed by it should be reviewed to ensure that they are not excessive.

- **Lack of Requirements**

In contrast, Schedule 2 of the licensing by-law places no other requirement on the licensed holder other than he pay a fee. This represents the other extreme of the city's licensing schedules. It prompts one to ask the reason for its existence other than to serve as a taxing by-law. This appears a fettering of powers in comparison to exercise of licensing powers through the schedule related to auctioneers in that the authority for the two exercises of power is very similar.

Schedule 24 — Again, similar to Schedule 2, this by-law simply requires payment of a fee and imposes no regulation of this industry. Further, comments made with respect to imposed fees in commenting on Schedule 12 (below) also apply here.

Schedule 25 — Comments with respect to Schedule 24 apply to this schedule as well.

- **Exceeding Granted Authority**

Regarding Schedule 3, the municipality may exceed its granted authority in Section 5(b).

Schedule 8 — The authority for the requirements set out in Sections 3(b) and (c) should be questioned.

Schedule 12 — The fee currently required to obtain a licence under this schedule is \$289. However, the maximum fee authorized by the Municipal Act for such a licence is \$250. Thus, the municipality is without authority to collect the amount of the fee that it currently collects with respect to this licence.

Schedule 26 — Comments with respect to Schedule 12 apply to this schedule as well.

- **Vagueness Could Allow for Discrimination**

Schedule 4 is an exceptionally complex schedule as it governs the taxi industry. On the whole it appears well-constructed, but the following are of concern:

- Section 12(2) is vague to the extent that it indicates that before the issuance of an owner's licence, the applicant should provide the City, in writing, with certain information in respect of any vehicle to be used as a taxi cab vehicle including "such other particulars as the city may request". To the extent that that section would allow for discrimination amongst various applicants, it would likely be struck down and thus, the City would likely be restricted to the various types of information particularly specified within the by-law.

- **Authority of Licence Inspector**

A case in point is Section 14 of By-law 79-323 which would enable, among other persons, a Licence Inspector to inspect any licensed premises and any records required by the By-law to be kept by the licensee. This Section would appear to give the inspector an unfettered right to have access to any licensed premises. Where resistance is encountered to inspection of such premises a breach of the peace may not occur. However, in order to carry out the function of the Licence Inspector, a Court Application and subsequent Order would be necessary to gain access to the premises.

- **Use of Character Reference**

Further, Section 15 of By-law 79-323 provides that the Licensing Committee may suspend or revoke a licence where the character of the licensee appears to provide an adverse reputation to the trade, calling, business, or occupation, or appears to result in acts or omissions adverse to good trade calling business or occupation practices. The appearance of a bad reputation or the appearance of acts or omissions adverse to the best interests of the trade or occupation are not sufficient to revoke or suspend a licence. The Licensing Committee, after a Hearing, may make a finding based on a complaint concerning the reputation or acts or omissions of the licensee, which may be used as the considerations for a decision to suspend or revoke a licence. The wording of this section could be usefully revised. It is noted that the Licensing Committee "after a hearing for the purpose, upon notice to the licensee to attend may, after consideration of all relevant matters, make a decision resulting in the suspension or revocation of a license". This amendment to the By-law may be useful. Also, revocation of a licence by the Committee should occur only after a Hearing. Unresolved complaints may result in suspension of a licence pending a Hearing.

- **Definition of By-law Enforcement Officers**

The Chief Licence Inspector under By-law 79-323 is responsible to enforce the Licence By-law. License Inspectors, by virtue of being by-law enforcement officers of the

Licensing By-law are, under Section 70 of the Police Act, also peace officers. This entails the right to detain and arrest and lay charges against violators of the By-law and its schedules. While it may be administratively suitable to lump the Licence and Building Inspectors together as being by-law enforcement officers, their functions are very different. The Licence Inspectors frequently work closely with Building Department Inspectors and also with Public Health Inspectors in the enforcement of the City's public health by-laws respecting licensed premises. The role and function of Licence Inspectors needs to be reviewed and revised to avoid overlap with other by-law enforcement provisions and, to provide for enforcement of the regulations of schedules which are currently neglected.

- **English Only**

Under Schedule 6 to the By-law for rental cars and trucks, English language service only is provided for. Under the Province's Language Services Act, Hamilton is one of the designated areas which may pass a by-law to provide municipal services in both English and French. We are not aware of the by-law being passed and in such case it is likely that an English language provision only is supportable at this time. The Schedule, however, goes on to require information concerning age and sex of the applicant which may violate the discrimination prohibitions under the Canadian Charter of Rights.

- **Complicated, Repetitious Language**

With respect to Section 18 of Schedule 4, Regulation 2 seems to duplicate the requirements in that it required that the vehicle be kept "in good repair as to its interior and exterior, free from mechanical defects, in fit condition for the purpose for which the vehicle is used, and in safe driving condition". It would appear that, to an extent, these requirements say the same thing in a number of different ways and may therefore be a source of confusion. Further, Regulations 18-21 and 22 could simply state that the taxi driver was required to accept the request of the first person requesting service rather than "requiring that he or she not refuse to serve the first person requesting service".

- **Definitions**

Schedule 9 — Section 2(2) of this schedule makes reference to certain terms that are not defined by the schedule. These terms are "butcher shop", "fish shop", "eating establishment", or "refreshment vehicle".

Schedule 21 — This section may be confusing in that it does not carry forward into it the definitions contained in the provincial legislation of tourist camp and trailer camp. Further, the fee required within Section 5 of this schedule fails to incorporate an exemption contained within the Municipal Act. That exemption is that "...except that where a lot is to be made available only for temporary occupancy by persons who continue to maintain elsewhere a usual or normal place of residence or for occupancy by a trailer that is assessed under the Assessment Act, no licence fee shall be charged". To the extent that the municipality is collecting licence fees for this type of lot, they are likely exceeding their authority. Further, the requirements of Sections 9 and 10 of the schedule are vague in that they require adequate and suitable lighting and sanitary facilities, but give no indication of what is suitable. To the extent that these requirements might result in different obligations being placed on different applicants, they may be unenforceable.

Schedule 22 — The definition of transient vendor employed by this schedule does not accord with the definition of that term within the Municipal Act. Again, the reporting requirements of this schedule should be reviewed to ensure that they are not excessive.

- **Options to Municipal By-laws**

Schedule 23 — This schedule is quite onerous and may exceed the authority of the municipality to regulate in this area. As the Ontario Society for Prevention for Cruelty to Animals has by-law-making power and as its object is to facilitate and provide for the prevention of cruelty to animals and their protection and relief therefrom, it may be appropriate to pass on to that body the responsibility for licensing this type of enterprise.

- **Conflicts with Charter**

Schedule 19 — While the wording of section 2(1) of this by-law is taken directly from the authorizing section within the provincial legislation, it may still contravene the Charter as being contrary to the guaranteed right of freedom of expression therein.

Schedule 27 — The wording of section 1(2) of this schedule likely requires a change in light of the Charter.

- **Creating Legislative Monopoly**

Schedule 29 — The requirement that an applicant for a masseur's licence obtain a licence from the Board of Directors of Masseurs, may be void as creating a legislative monopoly.

- **Delegation of Power**

Schedule 40 — Comments made with respect to Schedule 1 of this by-law regarding reporting requirements apply similarly here with respect to sections 4 and 6. As well, the Council appears to have delegated to the Licensing Committee the power to issue licences here in section 7 and to revoke them in section 10. This may not be justified.

- **Compliance with the Criminal Code**

By-law 78-130 licenses lottery schemes and is governed by the Criminal Code. Its "definitions" prevail over those in the By-law which should be revised to prevent conflict. A review by the Law Department should be made of the definitions in By-law 78-130 (lotteries) to ensure their compliance with the provisions of the Criminal Code.

The City does not have a licensing strategy to guide the focus of licensing in the City and the management of the existing licence portfolio. As such, there is no plan to deal with the reactivity, the complexity and the frustration surrounding licensing in a manner that can be properly absorbed within the City's budget and schedule.

RECOMMENDATIONS

- #1.1: We recommend that a coherent licensing strategy be developed for the City as a guideline for creation, enforcement, administration and amendment. It should present a controlled and effective approach to licensing within the municipality and be supported by City Council as well as the various interfacing departments. The licensing strategy should contain, but not be limited to the following:
- (a) the purpose of licensing in the City of Hamilton and a definition of the licensing and inspection philosophies and its interface with other legislation;
 - (b) in light of the purpose and philosophy, the appropriate roles are clearly defined for the various parties involved in licensing including Council, Licensing Committee, Finance and Administration Committee, Law Department, Licence Division and interfacing departments;
 - (c) a set of criteria to be applied when considering the future and present establishment or amendment of licences by-laws, and the elimination of current by-law (examples of criteria - self-governing alternatives, effect on enforcement, administration, long term implications, sensitivity, significance, cost vs. benefit, interfacing department opinion, interfacing legislation and so forth);
 - (d) the plan for correction of existing licence complexities (avoiding large task forces);
 - (e) the process for continual re-evaluation of current licence by-laws;
 - (f) the plan for regionalization of selected licences; and
 - (g) the plan for computerization.
- #1.2: We recommend that the licensing strategy (Recommendation #1.1) be developed by a person external to the City's operations. It is essential that an independent, fair and strategic perspective be taken in the development of the strategy. The design process should include consultation with Council and all parties involved in licensing and subsequent 'buy in'. The individual should have the following characteristics - a familiarity with the subjects of licensing, regionalization, computerization, strategy design and implementation experience, consultative and consensus building skills. To emphasize the importance and cross departmental nature of the strategy the individual should report to the CAO until the strategy is completed.
- #1.3: We recommend that the Law Department regularly conduct in consultation with Licence Division a periodic review of the City's Licensing By-laws to ensure compliance with new legislation and administrative concerns.

FINDING #2 — ROLE OF THE LICENSING COMMITTEE AND ITS INTERFACE WITH THE CITY'S LICENCE DIVISION AND LAW DEPARTMENT

The role and responsibility of the Licensing Committee and Licence Division Manager as defined in the City of Hamilton Act, Chapter 119, is different than the role and responsibilities currently assumed by the Licensing Committee and the Licence Division. Similarly the role and responsibility of the Licensing Committee and the City's Law Department places the Law Department in a position where it is in a conflict of interest.

BASIS

In comparing the role of the Licensing Committee to the role of the Licence Division and the Law Department, two areas of concern arose.

Role of the Licensing Committee and the Licence Division Manager —

The City of Hamilton Act (No.1) S.O. 1978 Chapter 119, sets out the legal basis for all City licensing activity. All City by-laws concerning licensing must conform to this legislation as well as all presently active City policies, practices and procedures in this area of activity. The legislation clearly places the legal responsibility for the issue, revocation, suspension or transfer or renewal of licences with the City Licensing Committee. In Hamilton, this authority is exercised by the Licence Committee. This would entail a decision by the Committee on each licence application. The role of the Licence Division Manager would be to collate the applications together with background material and the results of any investigations concerning the applicant, and present these to the Committee with a recommendation.

It appears that the administrative function of the Licence Division Manager has been expanded to issuing licences and renewals and later having these ratified by the Committee. This is a practice which should be discontinued until such time as the provincial legislation could be amended to delegate certain functions to the Licence Division Manager by the Committee or notify applicant of an intent to deal with/discuss the application and reach a decision after hearing the applicant. The decision-making function, however, cannot be delegated. The legislation does provide that in the event of a dispute between the applicant and the Licence Division Manager over the issue, transfer, or renewal of a licence, the Committee shall consider the matter and make a recommendation to the City Council. The legislation therefore would allow the Licensing Committee a limited jurisdiction in the issue, transfer and renewal of licences where a dispute is present.

Role of the Licensing Committee and the City's Law Department —

Reference is made to Hearings before the Licensing Committee which may, under Section 106 of the Municipal Act, hear all parties to the dispute concerning a licence and make a report to Council which Council may adopt without re-hearing the matter. At the Hearing the Statutory Powers and Procedures Act should apply without amendment by any procedural guidelines. The Licensing Committee would be represented by Counsel from the City's Law Department. The applicant licensee would have his or her own legal

counsel and the Licence Division Manager under the current practice would be independently represented as the party being appealed from. Under the present legislation, the Licence Division Manager, as an administrative functionary of the Committee, should not be independently represented as he should be acting on behalf of and in the name of the Committee in issuing or refusing to issue or renewing or refusing to renew a licence. As stated above, he should not be seen as having been delegated any decision making function. Under By-law 79-323 Section 2, there appears to be too wide a delegation to the Licence Division Manager with power to act in place of the Committee.

A similar situation does not exist with respect to the Regional Trades Licensing By-law No. R88-136 where appeals are taken from the action of the Licence Administrator (the Licence Division Manager of the City) to refuse to issue or renew a licence. The Licence Division Manager under this By-law has delegated authority. The Regional Law Department representative provides legal advice to the Regional Legislation Reception Committee acting as the Trades Licence Appeal Committee. The Licence Division Manager would be independently represented as the Manager has certain specific and delegated functions under the Trades Licence By-law. The application licensee of course would also be independently represented by legal counsel.

In conclusion, the City's Law Department should not advise the Licence Division Manager on matters involving a refusal to issue or renew a licence. They would be in a position of conflict having to represent the deliberative body (Licensing Committee) as well as the person appealed from. An anomaly occurs in the enabling City of Hamilton Legislation whereby the Licensing Committee has the statutory duty to issue or refuse to issue or renew or refuse to renew a licence and at the same time to hear an appeal by a licensee from the Committee's decision in the same matter. This violates a fundamental principle of law that persons or bodies may not sit in judgement on their own decision. This would not occur by not making a decision until hearing the applicant. It is suggested that the legislation be reviewed for the purpose of appropriate amendments being made to resolve this fundamental conflict in law.

RECOMMENDATIONS

- #2.1: We recommend that the implementation of the City of Hamilton Act (1) s.o. 1978, Chapter 119, be reviewed to clarify conflicts concerning the City's Licensing Committee and the possible provisions of delegated authority to the Licence Division Manager.
- #2.2: We recommend that the implementation of the City of Hamilton Act (1) s.o. 1978 Chapter 119, be revised to remove any conflict between the decision-making function of the Licensing Committee and its appeal function or that, in the alternative, the City petition the Province to amend existing legislation to clarify the role of the Committee.
- #2.3: We recommend that the practices and procedures of the Licensing Committee and the Licence Division Manager be reviewed and revised to emphasize the administrative role of the Licence Division Manager and the decision-making role of the Licence Committee, or that, in the alternative, that the City petition the Province to pass legislation delegating to the Licence Division Manager decision making power.

- #2.4: We recommend that Hearing procedures before the Licensing Committee and the use of legal counsel be set out in a clear statement adopted by the Committee for the purpose of future Hearings before it and that the procedures adopted do not unnecessarily deviate from those set out in the Statutory Powers Procedures Act.
- #2.5: We recommend that the Law Department of the City not provide legal advice to the Licence Division on matters where there is a dispute between the Licence Division Manager and the licence applicant for issue or renewal which is likely to result in a hearing before the Licensing Committee.
- #2.6: We recommend that the Law Department provide legal advice to the Licence Committee only on hearing any matter before it and that independent legal advice be provided for the Licence Division Manager on Hearings before the Committee.

FINDING #3 — EXPECTATIONS, ROLE, STRUCTURE AND TOOLS OF LICENCE DIVISION

Expectations of Licence Division vary significantly. Performance targets and an accountability mechanism are not established. As such, the Licence Division's role and resulting structure are multi-focused in an attempt to accommodate all expectations.

BASIS

Since the nature of the City's licensing is reactive, it is understandable that the expectations of Licence Division are also varied and reactive. No clear performance expectations have been established for the Division. The Division also has not taken steps to define its own role, presumably because of the Division's greater desire to please and their inability to say "no".

From the focus group sessions and a review of activities performed by staff, it became evident that the Division's evolution into its present structure has been possible due to the long tenure of its staff and their dedication. Some aspects of the structure are "leading edge" while others are not. The following identifies the roles currently assumed.

- The role of Licence Division Manager has evolved into one of crisis response, question response, report response. While it is useful to have the most capable person responding, it is time consuming and does not allow the Manager to assume a badly needed coaching role. For example, there is no time to pursue continuous improvement, better equipment, computerization, effectiveness reporting, and communicating licence requirements to the public.
- The role of Administrative Supervisor has also paralleled that of the Manager — crisis response. Whereas the position was originally established to deal with the more complex licence applications and to supervise the Administrative Clerks, that role has been assumed by the Clerks and the Secretary. From an organization design and staff development perspective the delegation of these responsibilities is very good. However, in any delegation of this sort there have to be clear systems and appropriate training in place. The Division is relying on the long tenure and cross training of its Administrative Clerks and Secretary.
- The role of the Administrative Clerks has evolved not only to include processing applications, but it has expanded to become a City information service for the public, "one-stop shopping". Staff have a desire to assume this role no doubt to add more challenge to their work. While their attitude is applaudable, it raises several concerns about the type of information being provided and the risk of misinformation and subsequent potential lawsuits. Again there is excessive reliance on the Administrative Clerks long tenure and desire for a challenge.

- The role of the Secretary has evolved to a partial supervisory role for the Administrative Clerks and a partial support role for the Licence Division Manager in responding to requests for information, reports etc.
- The role of the Smoking Control Officer is primarily inspection and responding to complaints. The position has been isolated from the rest of the Inspection Officers.
- The role of the Chief Licence Inspector has evolved from being supervisory in nature to one of responding to complaints. The Chief Licence Inspector's office is at City Hall. The Licence Inspection Officers have developed into what is currently being called by organization designers as a "self managed work team". They are self directed, self supported and focused primarily on mobile inspections. The Licence Division Manager meets monthly with the Licence Inspection Officers in their office at the Taxi Inspection Office.
- The role of the Licence Inspection Officers has evolved to not only licence inspection, but also evening inspections for other departments, teaching taxi courses, physically inspecting cabs, running errands for the Clerk's Department and doing inspections for Flamborough, Ancaster, Dundas, Glanbrook, for free. Staff have assumed these responsibilities because they have been asked, but realistically question the value of some activities. In their isolation from the rest of Licence Division including the Chief Licence Inspector and their long tenure with the City in their roles, it is understandable how they have been successful as a "self managed work team" (SMWT). However, these teams work best when they have the respect and visible support of their Division. The officers need the equipment necessary to do a good job — in which they can take pride. They need someone to "go to bat" for them with other departments to sort out overlaps and work out equitable arrangements. They need the activities best done elsewhere reallocated. It is important to note that SMWT's are highly valued in an organization today and prove less costly to an organization.

The most serious impact of encouraging the Licence Division to continue in this role is that licensing in the City will never seriously be re-evaluated. The Licence Division is the glue. As long as the licensing activity remained minor and the potential for regionalization was a long time off, the glue was acceptable.

Licensing is no longer minor and regionalization of various activities is a possibility. The Licence Division has to lead the re-evaluation of licensing. In particular, the City needs a group:

- separate from all other departments; reporting directly to the CAO until the transition is complete;
- that helps develop a strategic focus for licensing in the City and follows that strategy;
- capable of providing high value service to its customers/voting public;
- with a positive image in the municipal structure;
- whose activities are allocated to the most appropriate departments, for example:

- regional trade licences could be the full responsibility of Building Department since they handle most of the work already;
 - marriage licence, sales of by-laws and city publication, city tenders, municipal election, full counter services, courier and shuttle services could be the responsibility of Clerks Department;
 - activities which could be regionalized, activities requiring coordination with other departments and by-law research/planning activities could form a new Licence group;
- that can recover its costs to a reasonable extent;
 - has clearly defined performance targets and an accountability mechanism in place;
 - positioned to act on the potential of regionalization;
 - located in an area with some privacy for applicants and away from large counter areas.

The City also needs the Licence Division management and supervisory team to redevelop its coping skills to a more advanced set of managerial and organizational skills (for example, planning, initiation, decision making, communication, etc.) to successfully operate now and in the future. This is not intended to criticize the team, but to strengthen individuals to be better able to operate in a new and improved structure.

The impact of this focus on improving the managerial skill base would be:

- the team would receive an assessment of their managerial skills, increasing their awareness of what areas need improvement;
- the team would receive training in areas where their managerial skills can be improved, thereby increasing their professional value and their value to the City;
- the management talent needed to operate the new structure would be developed from within the City's staff.

The concept of skills assessment and development could also be applied to the City's other departments which interface in the licensing activities.

RECOMMENDATIONS

- #3.1: We recommend that the City recast the Licence Division into a new Licence Division with the following characteristics:
1. Licence Division would perform those activities which could be regionalized, activities requiring coordination with other departments and by-law research/planning activities. These activities are initially best suited for a group separate from the City's other departments.
 2. Regional trade licences would be assumed by the Building Department (they handle most of the work already). Staffing implications, should be determined by Building Department and Licence Division.
 3. Marriage licence, sales of by-laws and City publications, City tenders, municipal elections, full counter services, courier and shuttle services would be assumed by the City Clerk's Department. Staffing implications, should be determined by City Clerk's Department and Licence Division.
 4. Licence Division would initially report directly to the CAO to emphasize the importance and urgency of implementing change in the City's licensing activities. After the transition is complete, the Division could remain a separate unit or report to one of the various City departments depending on the nature and scope of the licence activities.
 5. Licence Division would help develop the licensing strategy and plan.
 6. Licence Division would be relocated to a more private area with appropriate security to provide greater confidentiality for the public.
- #3.2: We recommend that the managerial skills of Licence Division's management and supervisory team be redefined and developed to support the new structure and responsibilities identified in Recommendation #3.1. Under the direction of the Director of Human Resources, a skills inventory should be undertaken and based on the results, a training program for each person be implemented.
- #3.3: We recommend that the position of Smoking Control Officer be transferred to the Health Department as it is not enforcing a licence.
- #3.4: We recommend that the Licence Division create a position called Research and Planning Assistant. A senior position, the incumbent would assume much of the research role now performed by the Licence Division Manager, Administrative Supervisor and Secretary and examine the impact of by-laws. This position should be filled immediately to allow the Manager of Licence Division to assume new responsibilities.
- #3.5: We recommend that the Administrative Supervisor's position be refocused to coordination of applications, but include a focus on public education, formation of turnaround standards, etc.
- #3.6: We recommend that the Administrative Clerks enhance their cross training and each one assume responsibilities for all the procedures pertaining to one file. Rotation of Clerks to

other departments should be considered as a further way to challenge and reward long tenure staff.

- #3.7: We recommend that "one stop shopping" at the Licence Division be encouraged only to the extent it does not interfere with the provision of regular services and does not place the City at risk.
- #3.8: We recommend that the Chief Licence Inspector position be relocated to the Taxi Inspection Office.
- #3.9: We recommend that the equipment needs of the Inspectors be assessed and budgeted for in the new year.
- #3.10: We recommend that 'garage type' inspection options be evaluated and the most effective method be implemented.
- #3.11: We recommend that the secretarial support hired for Inspection, but housed at City Hall be relocated to the Taxi Inspection Office. All inspectors should then be allowed to be out of the office and not be required to staff the office.
- #3.12: We recommend that the Licence Division Manager conduct joint briefing sessions with administrative and inspection staff to communicate Licensing Committee decisions and promote communication within the Division.
- #3.13: We recommend that the Licence Division set performance targets and report on their achievement.
- #3.14: We recommend that fees be established for work done by license inspection for other municipalities.

FINDING #4 — PROCESS IMPROVEMENT

Contact between the Licence Division and interfacing departments has been primarily to process licence applications, renewals and compliance resolution. Very little attention has been focused on process improvement.

BASIS

The interfacing departments - Law, Building, Fire, Health, Traffic and Police (Records and Vice) and Licensing Division work well together. The interfacing departments commented on the dedication of the Licence Division staff and the good liaison. Licence Division commented on the cooperation of the interfacing departments. Both groups agreed that many of the problems they face are caused by the complexity of the licensing by-laws and processes.

The interface has been complicated over the years by the following:

- any changes proposed to streamline the licensing processes in the past have not been implemented;
- the problems with the licensing by-laws overshadow the problems with the processes and it is assumed that no improvements can be made without first changing the by-laws;
- some staff fear change and see it only as a means to increase workload;
- people follow old, unwritten rules which have no relevance today;
- a perception that any change requires large committees, significant contributions of time, and that there is only one chance to make improvements;
- the continual introduction of new or amendments to licensing by-laws which can be difficult to administer and enforce;
- having to accommodate and enforce several legislations in addition to City licensing;
- the lack of funding and staff available to meet all legislative and by-law requirements;
- the overall lack of direction and focus of licensing by the City; and finally
- the overall lack of interest and response by the City to any suggestions made for improvement.

Without a clear understanding of "continuous improvement", without the tools to effect change, and without the commitment and visible support of senior management to change, both Licence

Division and the interfacing departments are skeptical that any changes can be made to help them do their job more effectively. However, both groups stated a willingness to try.

Interfacing departments when asked during the focus group session, identified as examples several process related improvements (other than by-laws) which could help the overall interface, such as:

- avoiding the forwarding of incomplete applications to their departments by having Licence Division, through a standard form explain the documentation and information requirements of the departments to the applicant;
- cross training of Licence Division and interfacing department staff to familiarize staff with mutual requirements;
- avoiding the forwarding of all applicants mailed 'Rush' by setting cycle time/turnaround time standards for various types of applications and communicating it to applicants using a variety of methods (i.e. sign in waiting area, legal and real estate information circulators/newsletters, etc.);
- reducing the number of criminal licence checks to only those circumstances where they could have a definite influence on the decision to issue a licence;
- developing information material for potential applicants;
- reducing information passed back and forth to only that which is essential and useful;
- increasing knowledge of by-laws through special in-house briefings by the Law Department; and
- the Chief of each inspection group (Licence Division, Building, Fire, and Health) meet regularly to exchange information. An inspector from each group chosen on a rotation basis should accompany their Chiefs to these meetings.

Licence Division, when asked during the focus group session, identified as examples several process related improvements (other than by-laws) which could also help the interface, such as:

- setting cycle time/turnaround standards for various types of inspections;
- having Commissioners available when needed to sign applications, confer with, etc.;
- ensuring all checks and approvals are needed;
- applications specifying information that must be provided before an application can be accepted for approval;

- reducing the number of copies required of documents; and
- identifying ways to meet night inspection requirements, but avoiding split shifts etc.

The potential impact of process improvement could be significant, but unless it is supported and expected, these opportunities and others will not be realized.

RECOMMENDATIONS

- #4.1: We recommend that Licence Division and interfacing departments: (1) receive a briefing on the concept of continuous improvement; (2) get together on a "one to one" or "small team" basis to make immediate streamlining improvements and to continue to work together in a continuous improvement mode; and (3) monitor and reward improvements. Senior management should reinforce and support the changes made.
- #4.2: We recommend that Licence Division and interfacing departments rotate staff/exchange staff to help each group better understand other groups needs.
- #4.3: We recommend that turnaround standards be established and agreed upon by the Licence Division and interfacing departments and the service standards be communicated to the public.
- #4.4: We recommend that the Law Department and Building Department start a series of quarterly briefings on the by-laws and other legislation for License Division and interfacing departments. The Law Department should give case law examples, explain that lawyers are insured and qualified to give legal advice while others are not, encourage questions and discussion ways to revise the by-laws.
- #4.5: We recommend that bi-monthly Chief Inspectors meetings be started. Each group's Chief inspector and inspector (chosen on rotation) attend. Current issues and process interface items should be included on the agenda.

FINDING #5 — COMPUTERIZATION OPPORTUNITIES

While major computerized system introductions in Licence Division are unlikely, several opportunities for minor system improvements exist which have not as yet been fully implemented by the Division.

BASIS

The status of systems opportunities and improvements were reviewed and the following were noted:

- Division Systems Plan — The Division does not have a systems plan which anticipates the need and possible timing of system hardware and software introductions into the Division as well as the training requirements associated with existing and anticipated systems. The lack of a plan has not enabled the Division to catalogue staff's training needs and to budget for hardware, software and training.
- Computer Systems Expertise — The Division does not have a person skilled in the use of the software it presently has and needs. Staff are eager to learn and have acquired some of the necessary skills. The best systems resource currently is the System Department but their priorities force them to primarily focus on major systems. The lack of computer skills in the Division has not allowed the Division to expand its use of its systems.
- Interdepartmental Licensing Software — The interfacing departments and the Licence Division staff identified the need for interdepartmental licensing software. This system would allow each department involved in licensing and inspection of licences immediate access to the licence status. Such a system has not been prioritized for implementation. This is a valid position to have taken at this time given the uncertainty around regionalization and the costs of such a system. However, it then places a greater priority on the Division to streamline its existing licensing co-ordination and paperflow.
- PARCEL Zoning Software — The City's most significant systems project currently underway is the development of PARCEL, a zoning related system. Licence Division is not part of the project and therefore will not have access to it. If the Licence Division continues in its role of providing screening information to applicants by referring to the zoning maps, then this package would be of use. However, if this role is considered to be no longer appropriate for Licence Division, then access to PARCEL is not required.
- Recent Division Initiatives — Licence Division has recently implemented FOCUS software for bingo licensing and has installed a personal computer (PC) in the Taxi Inspection Office. In addition all complaints and complaint inspection reports are being entered and stored on a PC. Both administrative and inspection staff are enthused about the potential for analysis and reporting data as well as making their jobs easier.
- Other opportunities not requiring a major cash outlay include:
 - providing mainframe linkage for the Taxi Inspection Office. This will allow inspectors to access information on licences quickly and not continually disrupt the administrative staff at City Hall.

- expand the use of FOCUS software to all lotteries from its present use;
- pilot WINDOWS software to allow added function for word processing;
- consider adding print capability in the Division to respond to licence requests;
- review all processes that are currently computerized (especially the complaints system) to ensure that data entry of information is necessary, ease of access to stored information, and the information can be sorted for reporting purposes;
- modifications to the mainframe system to add mailing addresses (eliminate manual sorting of renewals) and to add a remarks field; and
- review all manual processes for computerization potential.

RECOMMENDATIONS

- #5.1: We recommend that Licence Division develop a systems plan which anticipates systems hardware, software and training requirements associated with existing and proposed systems. This plan should be appropriately approved, budgeted and implemented.
- #5.2: We recommend that Licence Division identify two staff within the Division (one administrative, one inspection), who have demonstrated ability with computer tools. These staff should be responsible for Division staff training in computer tools.
- #5.3: We recommend that the Licence Division implement the minor systems opportunities identified, to simplify procedures for Licence Division staff and to reduce workload and interruptions.

FINDING #6 — REPORTING

The effectiveness of the City's licensing portfolio and the effectiveness of the structures and processes in place to support that portfolio are not reported for review by all parties involved in licensing decisions and activities.

BASIS

Reporting by the Licence Division is primary issue related and prepared upon specific request. Examples of such reports include:

- Review of Second-Level Lodging House By-law;
- Response to the Ministry of Consumer and Commercial Relations' Discussion Paper on Charitable Gaming in Ontario; and
- Report to City Council on the Taxicab Priority List Review

These reports typically take a tremendous amount of time to prepare and usually consume most of the time of the Licence Division Manager, Administrative Supervisor and Secretary.

Other reporting by the Licence Division consists of lists of licences issued. Examples of such reports include:

- record of bingo events (quarterly) for the Licensing Committee and the Licence Division Manager;
- new licence/transfers reports (weekly) for Licensing Committee and the Licence Division Manager;
- trade licences issued (monthly for payment) for municipalities within the region;
- lists of licences (upon request) for the region, fire, health, others.

The listings are not usually accompanied by analyses or recommendations.

It is not unexpected that the Licensing Division (which is continually forced to react to requests and which has not assumed a monitoring role) does not provide regular information on the effectiveness of the City's licensing portfolio and the effectiveness of the structures and processes in place to support that portfolio. Nevertheless, stewardship of the licensing portfolio cannot be properly executed without such information.

Information on the effectiveness of the licensing portfolio, structures and processes would allow the City to:

- eliminate licences that are no longer required;
- plan for new licences in areas that are starting to show signs of problems;
- identify the overlaps between licensing and other legislated requirements and allow a rationalization of such;
- reduce or seriously consider the need for ad hoc issue-related reports;
- redesign structures to meet evolving needs;
- redesign processes that present bottlenecks to the efficient reaction, enforcement and administration of by-laws;
- identify shortages in tools necessary to complete a quality job and plan for refurbishment;
- identify activities which require a technical expertise that can be more economically delivered in other ways; and
- identify when a job has been well done, and recognize and reward people.

Effectiveness information will allow decision makers to evaluate overall performance of the licensing portfolio and to take action.

RECOMMENDATIONS

- #6.1: We recommend that all issue related requests for reports be questioned as to their need and the impact on workload. Licence Division has to be given permission to say "no" to many requests and focus on effectiveness reporting.
- #6.2: We recommend that Licence Division with the support of interfacing departments start a series of quarterly effectiveness reports on the licensing portfolio, structure and processes.
- #6.3: We recommend that all listing reports be re-evaluated as to their purpose, content and frequency. Through process improvement real reporting needs will be identified.

FINDING #7 — COST OF LICENSING

The total cost of the City's licensing activities is not presently known. Costing of licensing activities would be useful for setting licence fees and external inspection rates as well as for budgeting purposes among the City departments involved in licensing.

BASIS

While everyone interviewed agreed that licensing should not be a revenue generating endeavour, most stated that licensing should at least recover costs where possible. With increasing pressure on City departments to reduce budgets, but deliver the essential services, knowing the costs of various licensing activities is very important. There is a general concern that the budget allocation is not fair and some activities that should be done are not.

The existing systems do not provide the required costing information and it is questionable as to the need for the information more often than annually. Also, the cost associated with maintaining a costing system on a day-to-day basis may be prohibitive. Recent advances in costing methodologies have identified Activity Based Costing ("ABC") which could be applied annually to the licensing activities.

The impact on the City in better understanding its total licensing costs will be:

- expensive processes can be identified and highlighted for examination by Licence Division and the interfacing departments. Processes with "non value added" steps can be streamlined reducing the workload and time requirements;
- licence fees can be adjusted to equal the costs or a decision can be taken to subsidize that particular licence or a decision can be taken to eliminate the licence because the costs associated with it far exceed any public benefit;
- fees paid and charged for regional services can be negotiated based on factual costs;
- budget monies can be allocated fairly among the departments based on their contribution to the licensing activities; and
- activities are identified which have no offsetting fees and the City can decide to what degree those activities should continue.

RECOMMENDATIONS

- #7.1: We recommend that the City conduct an Activity Based Costing exercise on licensing. After the completion of an initial costing, a decision should be taken as to the completion of an ABC annually thereafter.

